



**Timely Reviews of Wireless Facilities Siting Proposals  
(WT Docket No. 08-165)**

- PCIA is the nation-wide non-profit trade association representing the wireless telecommunications infrastructure industry.
- Our members own/operate over 120,000 wireless facilities nationwide. Members include tower companies, wireless carriers, equipment and service providers.
- PCIA's advocacy efforts focus on effectuating policies that encourage the deployment of robust infrastructure to meet the needs of the wireless-using public.
- To this end, PCIA engages with policymakers to offer resources and industry perspectives.

- Wireless infrastructure is a necessary component for furthering the Commission's goals of ubiquitous deployment of advanced wireless services and broadband.
- PCIA engages with state and local governments, and related policy organizations, to encourage reasonable wireless facilities siting regulations, and to provide industry information to decision-makers. PCIA's efforts in this regard are in furtherance of the objectives in the Petition.
- A timeline for zoning review of wireless facilities siting applications conforms to Telecommunications Act interpretations, and would alleviate unreasonable delays in wireless infrastructure deployment.
- Clear consequences for a jurisdiction's "failure to act" on a wireless facilities siting application provides certainty in a time-sensitive infrastructure development environment.
- A determination that the Telecommunications Act preempts local zoning ordinances to the extent that they require variances from the relevant land-use provisions for the approval of wireless telecommunications facilities allows providers an opportunity to prove compliance of the facility with relevant land use codes.

- Realization of the Commission's goals for wireless and broadband services deployment depends on a backbone of robust wireless infrastructure.
- The public is demanding wireless broadband. The FCC's 2008 Broadband Report shows that mobile wireless broadband subscribership increased from 11 million in 2006 to 35 million in 2007, a 218% increase.
- Recent carrier deployments like Sprint's Xohm show how wireless service is a critical platform for broadband delivery.
- The Commission recognizes the connection between facilities and service. In its Draft Strategic Plan for 2009-2014 (released 6/24/08), the Commission stated that regulatory policies "must promote technological neutrality, competition, investment, and innovation...."
- Without network investment, these advances are not possible. Wireless service providers are investing more in their networks than ever before to develop the *capacity* necessary to support these advanced services—geographic coverage is no longer the main issue.
- In many communities with reasonable policies, local government regulation of wireless infrastructure development through the zoning process results in efficient and predictable deployment. Unfortunately, the Commission's goals of communications innovation are hindered in many local jurisdictions that impose unreasonable and even illegal restrictions on wireless infrastructure deployment through the land use review process.

- PCIA has developed a Model Zoning Ordinance to encourage collocation through an administrative approval process with clear timelines and fees, minimizing delay, expense, and the negative impact of municipal consultants.
- In September 2008, the South Dakota Public Utilities Commission announced it would recommend PCIA's Model Zoning Ordinance to all jurisdictions in the state.
- PCIA is active with the American Planning Association (APA) and its state chapters, the National Association of Counties (NACo) and the National League of Cities (NLC), presenting educational sessions, site tours and panel discussions on wireless infrastructure and land-use regulation.
- PCIA comments on individual zoning policy issues, including ordinance revisions, moratoria on wireless facilities, and the hiring of municipal consultants. We emphasize the critical role of wireless infrastructure for public safety, economic vitality and broadband access.
- PCIA's Model Siting Legislation also encourages collocation and provides clear timelines at the state level. To date, PCIA has been active in passage of such legislation in five states (CA, FL, HI, NC and TN). The National Conference of State Legislatures (NCSL) and the American Legislative Exchange Council (ALEC) have endorsed PCIA's Model Siting Legislation.
- The Petition's goals of certainty with respect to zoning process are complimentary to PCIA's state and local outreach efforts.

- It is reasonable to expect that local zoning authorities can review wireless facilities siting applications for conformance with the relevant zoning ordinance within a reasonable timeframe. This is especially the case for collocations of wireless facilities on existing structures (including towers, rooftops or water tanks).
- Still, many jurisdictions impose unreasonable delays, as is well-evidenced in this docket.
- These delays are exacerbated without a defined “failure to act” standard under the Telecommunications Act (as expressed in Section 332(b)(7)).
- Delays are also caused by the following:
  - Review of applications by private municipal consultants, whose inquiries may violate existing Telecommunications Act pre-emption, and who often exact exorbitant hourly-based fees from the process.
  - Moratoria on wireless facilities siting approvals, which halts infrastructure development. Moratoria over six (6) months should be expressly pre-empted.
  - Repeated labeling of an application as “tabled” without reference to specific items to be completed, or questions to be answered.

- The Telecommunications Act specifically prohibits these types of lengthy delays. Section 332(c)(7)(B)(i)(II) notes that local regulation of wireless facilities “shall not prohibit or have the effect of prohibiting the provision of personal wireless service.”
- As one court has noted, Section 332 of the Telecommunications Act “implement[s] Congress’ intent ‘to stop local authorities from keeping wireless providers tied up in the hearing process’ through invocation of state procedures, moratoria or gimmicks.” *Lucas v. Planning Bd.*, 7 F. Supp. 2d 310, 321-322 (S.D.N.Y. 1998) (internal citations omitted).
- Claims that a timeline would simply provide the applicant a reason to delay are red-herrings as ordinances, such as PCIA’s model ordinance, specifically address this scenario:
  - The jurisdiction, upon receipt of the application, has 10 days to notify the applicant of any deficiencies.
  - The timeline would not begin to run until the jurisdiction has verified that the application is complete, removing any incentive for an applicant to delay.

- As the *Petition* notes, the Commission has confronted the same dilemma in the directly analogous local franchising context. The Commission reasoned in the local franchising situation that encouraging cable franchising authorities to reach a final decision within an applicable time frame should include “meaningful consequences.” *In re* Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, 22 FCC Rcd. 5101, 5139, MB Dkt. No. 05-311 (Mar. 5, 2007).
- The Cable Act’s goal of preserving “the critical role of municipal governments in the franchise process . . . while affirming the FCC’s exclusive jurisdiction over cable service, and overall facilities which relate to such service” is directly analogous to the goals of Telecommunications Act Section 332(b)(7).
- Clearly-defined consequences for a “failure to act” would provide *certainty of process* by ensuring a minimum level of jurisdictional responsiveness in the siting process that is now missing in many contexts. This is essential for a wireless carrier to plan how to fully implement their service goals.
- It also provides an incentive for the jurisdiction to fully and accurately describe their rationales for their decision. A written decision based on substantial evidence is also required by the Telecommunications Act, but the importance of such a decision cannot be overstated.
- Consequences for failure to act could include a conclusion that the application is “deemed granted,” or a rebuttable presumption of same.

- A variance is a departure from the applicable land use regulation, and is only granted because of inherent characteristics of the parcel that lead to a circumstance in which unreasonable hardship occur if the variance was not granted. In most ordinances, variances are granted in extremely rare circumstances, and require a showing that these characteristics lead to a situation in which reasonable use of the property is unavailable when the zoning ordinance is applied to it.
- It is overwhelmingly difficult for wireless infrastructure providers to make this showing, especially in situations in which the proposed facility shares a parcel with another use.
- Wireless facilities ordinances should always permit applicants to apply for proposed facilities, with appropriate design limitations consistent with zoning goals of protecting the health, safety, and welfare of the general public.
- Policies that require a variance for the approval of wireless telecommunications facilities are tantamount to an effective prohibition of wireless of wireless services in violation of Sections 332(c)(7)(B)(i) and/or 253(a) of the Telecommunications Act.

- PCIA supports the Petition's goals of encouraging timely zoning decisions on areas of inquiry appropriate for local zoning authorities, especially for collocations.
- The Telecommunications Act and its interpretive case law, as well as the recent cable franchising order, indicate that the Commission has authority to encourage written decisions in local zoning reviews.
- The addition of certainty and uniformity envisioned by the Petition will advance the Commission's goals of enabling accessibility to advanced wireless services nationwide.

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